

arm. Implicit in the Order is the finding there was just cause for claimant's failure to provide notice of the accidental injury to respondent within 10 days.

The respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment and whether there was just cause to extend the time period for providing notice.

Claimant argues the slip and fall was a natural consequence of the foot injury and notice had been provided for that original injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was diagnosed with plantar fasciitis in her right foot which respondent does not dispute. She was receiving medical treatment for that condition. On March 4, 2006, claimant was mopping water around the pool area at the hotel when her feet went out from under her and she fell landing on her right hand. She attributed the fall to the pain in her right foot. She testified her foot had been hurting since January 2006. The shooting pain in her foot was occurring with every step. Claimant argues that if she did not have the pain in her foot she would have paid attention and not fallen. But she agreed she slipped on the water around the pool area.

Although claimant knew she was required to report a work-related accident she denied that she knew she was required to report the accident within 10 days. And she further denied she had seen a poster that stated accidents were to be reported within 10 days. The respondent's human resources director testified that the Division of Workers Compensation poster that indicated notice of an accident was to be provided within 10 days was placed in a glass case on the wall outside her office. And she further testified claimant had been to her office when she had reported her foot injury.

Claimant noted that after the fall she did not think the hand problem was significant because she did not feel any broken bones. Later when her hand went numb and she was diagnosed with ulnar neuropathy she reported the slip and fall incident to respondent on April 28, 2006.

The May 1, 2006 office note of Dr. Benjamin Norman contained a history that after the fall claimant had numbness and tingling in her forearm, fourth and fifth fingers but that sensation would come and go so she did not report the incident. But as the problems persisted and worsened to the point her hand numbness was continuous she initially

sought emergency room care because she thought she was having a stroke.¹ After a stroke was ruled out and claimant was diagnosed with ulnar neuropathy she then reported her slip and fall incident to respondent. Claimant additionally noted that she did not initially report the slip and fall because she felt intimidated as the day before the incident the hotel manager had reprimanded her for not getting her work done on time.

Initially, claimant argues that the slip and fall incident was a natural and probable consequence of her compensable injury to her foot.

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.² The Board acknowledges that where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause, it would not be compensable.³

In situations such as this, there is often a very fine line between what would be described as a new and separate accidental injury versus a natural consequence of the original injury. In this instance, the claimant slipped and fell on water that she was mopping up next to a pool. This was a distinct trauma-inducing event and the mechanics of the slip and fall were not related to claimant's foot pain. The slip and fall on the water would have occurred absent claimant's primary injury and was the result of an independent intervening cause.

Respondent argues the claimant failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment. Respondent relies upon the fact that the slip and fall incident allegedly occurred on March 4, 2006, but was not reported until April 28, 2006, and hand pain was not mentioned in the interim medical reports of the various physicians treating claimant's foot. It must be noted that claimant's hand complaints were initially intermittent and her foot pain was her primary focus. As her hand complaints worsened claimant testified that she told the physician's assistant as well as the doctor treating her foot complaints. The fact that her hand complaints did not make it into the records of the physicians treating her foot are not controlling nor necessarily surprising as their authorization was to treat claimant's foot. This is illustrated by Dr. John Fanning's medical record of May 18, 2006, where it is noted in pertinent part:

She does complain of right hand numbness, which she associates with another injury at work. She has been told on multiple occasions that she will have to take

¹ P.H. Trans., Cl. Ex. 1.

² *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

³ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

that up with her employer, and we certainly are not treating that, and that is outside the scope of my orthopaedic practice.⁴

And the delay in reporting the accident was because claimant thought her hand condition was not significant and would improve. The Board affirms the ALJ's finding claimant's slip and fall and resultant right upper extremity injury arose out of and in the course of her employment.

Respondent next argues claimant has not established just cause to extend the time period for reporting the accident. Initially, the claimant testified that although she knew that she was required to report work-related accidents she was unaware of the 10-day notice requirement. While there was testimony that a poster explaining the requirement was in a glass case outside the human resource personnel's office, there is no testimony that claimant stopped and read that document when she went to the office to report her foot injury.

Secondly, it was a combination of factors that led to her delay in notifying the respondent of the accident. The claimant did not think she had broken anything in the fall and noted her hand symptoms initially would come and go. And the claimant was fearful about her job after she was admonished to perform her work faster the day before the accident. Finally, claimant's primary complaint was her foot pain which resulted in her being taken off work a few days after the slip and fall incident. It was not until her hand pain led to a trip to the emergency room that claimant concluded her condition needed treatment and at that time she notified the respondent.

The Board agrees with respondent that claimant's assertion she felt intimidated and thus did not report her accident, standing alone, does not establish just cause. However, under the unique factual circumstances of this case when claimant's feeling of intimidation is coupled with the fact that she initially thought her hand condition was insignificant and her primary pain complaint was to her foot it is understandable that she did not immediately report her accident. When her hand condition worsened and she was told it was not caused by a stroke she then notified respondent. Based upon the totality of circumstances the Board finds claimant had just cause and she timely notified respondent of her accident before the expiration of 75 days.⁵

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated June 29, 2006, is affirmed.

IT IS SO ORDERED.

⁴ P. H. Trans., Cl. Ex. 4.

⁵ See K.S.A. 44-520

Dated this 29th day of September 2006.

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier